ASSOCIATED TRACTORS SDN. BHD.

v.

CHAN BOON HENG & ANOR.

HIGH COURT MALAYA, ALOR SETAR
KC VOHRAH J
[CIVIL SUIT NO. 23-9-88]
12 SEPTEMBER 1989

CIVIL PROCEDURE: *Injunction - To confirm injunction obtained ex parte - Question whether the machine was sold or whether there was a rental agreement - Serious questions to be tried - No prayer for return of the machine - Resort to self-help to take back the machine - Question of irreparable loss - Compensation inadequate - Preservation of the status quo.*

The plaintiff sued the 1st defendant for arrears in rental in respect of rice harvesting machine and for the value of the machine. The 1st defendant applied for and obtained an *ex parte* injunction on 19 October 1988 restraining the plaintiffs from taking possession of the machine.

At the *inter-partes* hearing to confirm the injunction, the 1st defendant denied there was a rental agreement in respect of the machine. The 1st defendant claimed that the machine was sold by the plaintiffs' servant for a sum of RM225,000 of which a sum of RM90,000 had already been paid. The 1st defendant counterclaimed for the return of RM90,000 or damages for the plaintiffs' alleged failure to pass a good title on the machine.

Held:
[1] There are serious questions to be tried.

[2] The plaintiffs did not pray for the return of the machine, yet they tried to resort to self-help to take back the machine. Therefore the injunction should be granted to prevent prospective injury to the defendant.

[3] The 1st defendant could not be adequately compensated by damages in that it seemed almost certain that his whole business would be wiped out if his rice harvesting machine was taken away.

[Injunction allowed to continue until disposal of the suit.]

Legislation referred to:
Rules of the High Court 1980, O. 14

For the plaintiffs - Yusuf Khan; M/s. Yusuf Lee Pathma & Marbeck
For the defendants - B.H. Tan; M/s. Tan Teh & Co.

JUDGMENT

KC Vohrah J:

In this case the plaintiffs (a company) have sued the first defendant for arrears in rental in respect of a rice harvesting machine and for the value of the machine. The plaintiffs allege that the first defendant entered into a rental agreement with the company in regard to the machine. The second defendant is being sued as guarantor of the first defendant on the agreement.

The rice harvester is now in the possession of the first defendant. The first defendant applied for and obtained an *ex parte* injunction on 19 October 1988 before Lim Beng Choon J restraining the plaintiffs from taking by themselves or their agent, possession of or interfering with the harvesting machine in the possession of the first defendant.

At the *inter-partes* hearing before me to confirm the injunction the first defendant relied on the statement of defence, counterclaim and set-off filed by him and the second defendant. Therein the first defendant denies there was a rental agreement in respect of the machine and the second defendant denied he stood as guarantor. The first defendant claims that the harvesting machine was sold by the plaintiffs' servant or agent for a total sum of RM225,000 of which a sum of RM90,000 had already been paid towards the purchase price. The defence is also that the plaintiff company was not ready and willing to deliver and pass good title of the machine to the first defendant and that a loan which the plaintiff company had promised to arrange for the first defendant to finance the purchase had not been successfully arranged.

The first defendant has counterclaimed for the return of RM90,000 or alternatively special damages amounting to RM90,000 for the plaintiffs' alleged failure to pass a good title on the machine to the first defendant. To this counterclaim is a reply and defence by the plaintiffs.

The question whether the machine was sold by the plaintiffs to the first defendant or whether there was a rental agreement in respect of the machine cannot be decided at this stage. While there appears to be a rental agreement between the parties dated 31 December 1984 there is also a prior salesman's order (dated 25 November 1984) which appears to show that the machine was sold to the first defendant by the plaintiffs conditional (according to some handwritten notes in the document) on a particular term that the customer was to sign all H/P papers and several other terms which were set out in the document including a term that end financing was subject to the approval of Headquarters (see Exhibit CCC1 referred to in the affidavit of Cheng Chooi Chong for the plaintiffs sworn on 27 February 1989). There are other documents exhibited in the affidavits of both parties which each appropriate party avers show the truth of their respective claims. In the affidavit of Cheng (earlier stated) it has been alleged that the defendant was required to execute a rental agreement and did not and that (as stated in paras. 19 and 20 of the affidavit) the defendant rescinded the agreement to purchase the machine by hire-purchase and by his default (*sic*) to pay RM90,000 in accordance with the terms of CCC1 and that consequently only the rental agreement is applicable. But is that true? To my mind this and other questions especially those relating to title passing over will have to be determined more fully, but not at this stage.

There are serious question to be tried.

It will be noted that the plaintiffs merely claim for arrears in rentals and the value of the machine from the defendant. There is no prayer for the return of the machine. Yet the plaintiffs have not denied the specific and detained allegations of the first defendant that they (the plaintiffs) have tried to take back the machine through their agent. And it is clear from the affidavits that after the plaintiffs had filed their suit and submitted to the jurisdiction of the Court they tried to resort to self-help to take back the machine although they never prayed for its return in the pleadings. Bearing that in mind and since serious questions have to be tried I do not think the plaintiffs should be allowed to resort to self-help; and therefore the injunction should be granted to prevent prospective injury to the defendant.

There is another consideration. The first defendant has averred he would suffer irreparable loss and have his business completely ruined if the machine is to be taken by the plaintiffs before disposal of the suit. The machine is a rice harvester and in Kedah, the rice bowl of Malaysia, it is quite obvious that the machine would have been fully committed for use by the first defendant in his contracts to harvest padi in the state. If the machine is taken away it would certainly result in the first defendant suffering loss of earnings and probably in his having to pay damages due to the default to harvest padi. It seems almost a certainty he would have whole business wiped out if his machine is taken away.

In my view if the first defendant were to succeed in his defence and counterclaim he would not be adequately compensated by damages for the loss sustained between his application for the injunction and the final determination of the suit if his application for the injunction is refused. To my mind there should be a preservation of the *status quo*.

In the circumstances I allowed with costs the injunction to continue until disposal after trial of this suit or until the hearing of the plaintiff's application for the final judgment under O. 14 of the Rules of the High Court 1980.

Also found at [1989] 2 CLJ 1197